

In the Matter of Certificate of Service No. E-448659
Issued to: SEVERIANO GARCIA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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SEVERIANO GARCIA

This case comes before me from an order dated 16 December, 1948, by an Examiner of the United States Coast Guard who found Appellant guilty of misconduct pursuant to the provisions of 46 United States Code 239(g) and 46 Code of Federal Regulations 137.11-1.

From an investigation conducted by the Coast Guard, it developed that Appellant while serving under authority of his Certificate of Service No. E-448659 had served as utility man on the American SS PANAMA which terminated shipping articles on or about 5 November, 1948, at New York. On 6 November, 1948, Appellant returned to the PANAMA ostensibly to remove his clothing and was apprehended by an officer of the Customs Service when leaving the vessel with a quantity of 370 grains of marijuana on his person. He was accordingly charged with misconduct supported by one specification reciting that on or about 6 November, 1947, he unlawfully had in his possession certain narcotics, to wit, 370 grains net of marijuana.

At the hearing, Appellant was represented by an interpreter but otherwise declined legal representation and announced his intention to handle the case without assistance. A full explanation was given him of the nature of the proceedings and the possible consequences but he insisted upon going ahead with the hearing alone. Because of Appellant's statements, the Examiner entered a plea of "not guilty" to the charge and specification.

After hearing an explanation offered by Appellant which admitted his possession but denied knowledge of the character of the commodity discovered on his person, the Examiner entered an order revoking Certificate of Service No. E-448659 and all other valid certificates held by the Appellant.

From that order this appeal has been taken, and it is urged:

1. The order of revocation creates an undue hardship upon Appellant's family;
2. Appellant's conduct under a probation order of the United States Court has been satisfactory;
3. Appellant has been a seaman for many years and this is his only means of livelihood;
4. Appellant has learned a bitter lesson;
5. The order should be modified to permit him to return to sea.

Based upon a complete study of the record and consideration of the grounds of appeal, I make the following

FINDINGS OF FACT

On 6 November, 1947, Appellant having been previously discharged from shipping articles as a utilityman on the American merchant vessel PANAMA, then in the port of New York, returned to the PANAMA, gaining access thereto by virtue of a "ship's pass", allegedly for the purpose of removing clothing which he had left on board at the time of his earlier departure. While on board for that purpose he found a small package suspended by a string under the lavatory in the washroom customarily used by members of the stewards department. Upon opening the package, he found it contained a dry grass which he could not identify, and because of his ignorance, he placed the package in his waistband to take ashore where he could ascertain from some other person, the actual character of the grass. Appellant was leaving the vessel with the package on his person when he was intercepted by an officer of the Customs Service.

A Grand Jury in the United States District Court for the Southern District of New York subsequently returned a true bill charging the Appellant with being a transferee required by law to pay a transfer tax imposed by Section 2590(a) of the Internal Revenue Code, and with having unlawfully acquired 370 grains of marijuana without having paid the tax thereon. To this indictment, Appellant entered a plea of "guilty"; was fined \$100, but sentence of imprisonment was deferred subject to probation.

OPINION

I am not satisfied with the reasons assigned by Appellant for his concealment of a package which evidently was not his own and in which he should have had no interest.

Upon consideration of all the points raised by the Appellant, I find no reason to disturb the order of the Examiner.

CONCLUSIONS AND ORDER

The order dated 16 December, 1948, by the Examiner revoking Appellant's Certificate of Service No. E-448659 and all other valid certificates held by Appellant is **AFFIRMED**.

J. F. FARLEY
Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 1st day of March, 1949.